

1 AN ACT relating to data centers.

2 *Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

3 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 139 IS CREATED TO
4 READ AS FOLLOWS:

5 *(1) On and after August 1, 2022, and on and before July 31, 2052, the taxes imposed*
6 *by this chapter shall not apply to:*

7 *(a) Tangible personal property used to construct, retrofit, or upgrade a data*
8 *center; and*

9 *(b) Data center equipment for use in that data center;*
10 *purchased by a person engaged primarily in a commercial activity or separately*
11 *operated segment of business that exists for the purposes of engaging solely in*
12 *the operation of a data center or operating by collocating with a person that*
13 *operates a data center.*

14 *(2) The exemption provided in subsection (1) of this section shall apply whether or*
15 *not the seller is under contract to deliver, assemble, and incorporate into real*
16 *estate the equipment, machinery, attachments, and any materials incorporated*
17 *into the construction, retrofit, or upgrade of the data center.*

18 *(3) To qualify for the exemption provided in subsection (1) of this section, the data*
19 *center shall certify to the department that it shall:*

20 *(a) If located in a county with a population of less than one hundred thousand*
21 *(100,000):*

22 *1. Make capital investments in one (1) or more data centers after August*
23 *1, 2022, in amounts of at least one hundred fifty million dollars*
24 *(\$150,000,000) in the aggregate within the first five (5) years after*
25 *commencement of construction; and*

26 *2. Create and maintain at least twenty (20) new jobs at the data center*
27 *within two (2) calendar years after the commencement of operations.*

1 **(b) If located in a county with a population of one hundred thousand (100,000)**
2 **or more:**

3 **1. Make capital investments in one (1) or more data centers after August**
4 **1, 2022, in amounts of at least three hundred million dollars**
5 **(\$300,000,000) in the aggregate within the first five (5) years after**
6 **commencement of construction; and**

7 **2. Create and maintain at least thirty (30) new jobs at the data center**
8 **within two (2) calendar years after the commencement of operations.**

9 **(4) (a) Data centers shall report to the department annually, on or before**
10 **November 1 of each year, on behalf of itself and any person collocating**
11 **with the data center:**

12 **1. The progress made toward achieving performance targets, which shall**
13 **include:**

14 **a. i. A listing of the new jobs, each with an associated average**
15 **annual wage; and**

16 **ii. The annual aggregate amount of all payroll taxes paid,**
17 **both federal and state, related to wages; and**

18 **b. The amount of capital investment in data center facilities and**
19 **equipment;**

20 **2. The address of the location of the data center;**

21 **3. The county in which the data center is located;**

22 **4. A statement as to whether the county where the data center is located**
23 **has a population density, as calculated by dividing the number of**
24 **residents in the county based on the most recent federal decennial**
25 **census by the square miles in the county, of:**

26 **a. Less than sixty-two (62) persons per square mile;**

27 **b. Between sixty-two persons (62) persons per square mile and up**

- 1 to one hundred four (104) persons per square mile; or
- 2 c. One hundred four persons (104) or more per square mile;
- 3 5. A statement as to whether the data center is located in a federal
- 4 opportunity zone as designated in 26 U.S.C. sec. 1400Z-1 and 1400Z-
- 5 2; and
- 6 6. The total amount of the sales and use tax exemption claimed for the
- 7 immediately preceding fiscal year.
- 8 (b) If a data center fails to meet the investment and job creation requirements
- 9 outlined in subsection (3) of this section, the department may require the
- 10 data center to repay up to the entire amount of the previously exempted
- 11 sales or use taxes to the department, plus accrued interest, within sixty (60)
- 12 days. The department shall issue written notice to the data center that is out
- 13 of compliance and provide sixty (60) days for the data center to demonstrate
- 14 compliance.
- 15 (5) On or before December 31, 2022, and every biennium on December 31 thereafter
- 16 as long as the exemption applies, the department shall report to the Interim Joint
- 17 Committee on Appropriations and Revenue:
- 18 (a) The aggregate amount of capital investment and new jobs from all
- 19 qualifying data centers reported for the immediately preceding fiscal year
- 20 and in total for the year;
- 21 (b) Based on the most recent federal decennial census data, a statement as to
- 22 whether the county where the data center is located has a population density
- 23 of:
- 24 1. Less than sixty-two (62) persons per square mile;
- 25 2. Between sixty-two persons (62) persons per square mile and up to one
- 26 hundred four (104) persons per square mile; or
- 27 3. One hundred four persons (104) or more per square mile;

- 1 (c) The number of qualifying data centers located in a federal opportunity zone
2 as designated in 26 U.S.C. sec. 1400Z-1 and 1400Z-2; and
- 3 (d) The aggregate amount of the exemption claimed from all qualifying data
4 centers and the number of qualifying data centers benefitting from the
5 exemption, after three (3) or more qualified data centers have claimed the
6 exemption for at least two (2) years.
- 7 (6) Notwithstanding KRS 139.720, every qualifying data center using this exemption
8 shall keep the records, receipts, invoices, and other pertinent papers in the form
9 and timeframe as the department may require.
- 10 (7) Any reporting shall not include, and the department shall not publish or disclose,
11 any information that is not aggregated or any information or publication that
12 could be used to identify a specific person.
- 13 (8) As used in this section:
- 14 (a) "Capital investment" means:
- 15 1. Obligations incurred for labor and to contractors, subcontractors,
16 builders, and materialmen in connection with the acquisition,
17 construction, installation, equipping, and rehabilitation of a project;
- 18 2. The cost of acquiring land or rights in land within the development
19 area on the footprint of the project, and any cost incident thereto,
20 including recording fees;
- 21 3. The cost of contract bonds and of insurance of all kinds that may be
22 required or necessary during the course of acquisition, construction,
23 installation, equipping, and rehabilitation of a project which is not
24 paid by the contractor or contractors or otherwise provided;
- 25 4. All costs of architectural and engineering services, including test
26 borings, surveys, estimates, plans, specifications, preliminary
27 investigations, supervision of construction, and the performance of all

- 1 the duties required by or consequent upon the acquisition,
2 construction, installation, equipping, and rehabilitation of a project;
- 3 5. All costs that are required to be paid under the terms of any contract
4 for the acquisition, construction, installation, equipping, and
5 rehabilitation of a project; and
- 6 6. All other costs of a nature comparable to those described in this
7 subsection that occur after preliminary approval;
- 8 **(b) "Commencement of construction" means the first date on which a capital**
9 **investment has been made for a data center;**
- 10 **(c) "Commencement of operations" means the date on which a certificate of**
11 **occupancy is issued for a data center;**
- 12 **(d) "Data center" means a person that has a facility comprised of one (1) or**
13 **more buildings in Kentucky that is used to house and continuously operate**
14 **computer servers and associated data center equipment for the transmission**
15 **and storage of data where the facility has the following characteristics:**
- 16 **1. Uninterruptible power supplies, generator power, or both;**
- 17 **2. Sophisticated fire suppression and prevention systems;**
- 18 **3. Enhanced physical security; and**
- 19 **4. Restricted access;**
- 20 **(e) 1. "Data center equipment" means:**
- 21 **a. Equipment that is used to outfit, operate, or benefit a data**
22 **center; and**
- 23 **b. Component parts, installations, refreshments, replacements, and**
24 **upgrades to the equipment, regardless of whether any of the**
25 **equipment is affixed to or incorporated into real property.**
- 26 **2. Eligible "data center equipment" includes:**
- 27 **a. Equipment necessary for the transformation, generation,**

- 1 distribution, or management of electricity that is required to
- 2 operate computer servers or similar data storage equipment,
- 3 including:
- 4 i. Uninterruptible energy supplies;
- 5 ii. Generators;
- 6 iii. Conduit;
- 7 iv. Gaseous fuel piping;
- 8 v. Cabling;
- 9 vi. Duct banks;
- 10 vii. Switches;
- 11 viii. Switchboards;
- 12 ix. Batteries; and
- 13 x. Testing equipment;
- 14 b. Equipment necessary to cool and maintain a controlled
- 15 environment for the operation of computer servers or data
- 16 storage systems and other components of a computer data center,
- 17 including:
- 18 i. Mechanical equipment;
- 19 ii. Refrigerant piping;
- 20 iii. Gaseous fuel piping;
- 21 iv. Adiabatic and free cooling systems;
- 22 v. Cooling towers;
- 23 vi. Water softeners;
- 24 vii. Air handling units;
- 25 viii. Indoor direct exchange units;
- 26 ix. Fans;
- 27 x. Ducting; and

- 1 xi. Filters;
- 2 c. Water conservation systems, including facilities or mechanisms
- 3 that are designed to collect, conserve, and reuse water;
- 4 d. Related equipment, including but not limited to:
- 5 i. Enabling software and licensing agreements;
- 6 ii. Computer servers or similar data storage equipment;
- 7 iii. Chassis;
- 8 iv. Networking equipment;
- 9 v. Switches;
- 10 vi. Racks;
- 11 vii. Cabling;
- 12 viii. Trays; and
- 13 ix. Conduits;
- 14 e. Monitoring equipment;
- 15 f. Security systems;
- 16 g. i. Modular data centers; and
- 17 ii. Preassembled components of any item, including
- 18 components used in the manufacturing of modular data
- 19 centers; and
- 20 h. Other tangible personal property that is essential to the
- 21 operations of a computer data center;
- 22 (f) "Full-time employee" means a person employed for a minimum of thirty-
- 23 five (35) hours per week and subject to the tax imposed by KRS 141.020;
- 24 and
- 25 (g) 1. "New jobs" means new jobs that:
- 26 a. Are created and located in the state;
- 27 b. Are nonseasonal;

1 c. Are full-time, meaning a minimum of thirty-five (35) hours a
 2 week and subject to the state income tax imposed by KRS
 3 141.020; and

4 d. i. Collectively pay an average weekly wage that equals or
 5 exceeds one hundred twenty-five percent (125%) of the
 6 average weekly wage for the county where the data center
 7 is located, as determined by the most recent report of the
 8 United States Bureau of Labor Statistics; and

9 ii. If the average weekly wage calculated in subpart i. of this
 10 subdivision is less than one hundred fifty percent (150%) of
 11 the federal minimum wage, then the base hourly wage
 12 shall be one hundred fifty percent (150%) of the federal
 13 minimum wage.

14 2. "New jobs" does not include jobs that merely change locations within
 15 the state.

16 ➔Section 2. KRS 131.190 is amended to read as follows:

17 (1) No present or former commissioner or employee of the department, present or
 18 former member of a county board of assessment appeals, present or former property
 19 valuation administrator or employee, present or former secretary or employee of the
 20 Finance and Administration Cabinet, former secretary or employee of the Revenue
 21 Cabinet, or any other person, shall intentionally and without authorization inspect or
 22 divulge any information acquired by him or her of the affairs of any person, or
 23 information regarding the tax schedules, returns, or reports required to be filed with
 24 the department or other proper officer, or any information produced by a hearing or
 25 investigation, insofar as the information may have to do with the affairs of the
 26 person's business.

27 (2) The prohibition established by subsection (1) of this section shall not extend to:

- 1 (a) Information required in prosecutions for making false reports or returns of
2 property for taxation, or any other infraction of the tax laws;
- 3 (b) Any matter properly entered upon any assessment record, or in any way made
4 a matter of public record;
- 5 (c) Furnishing any taxpayer or his or her properly authorized agent with
6 information respecting his or her own return;
- 7 (d) Testimony provided by the commissioner or any employee of the department
8 in any court, or the introduction as evidence of returns or reports filed with the
9 department, in an action for violation of state or federal tax laws or in any
10 action challenging state or federal tax laws;
- 11 (e) Providing an owner of unmined coal, oil or gas reserves, and other mineral or
12 energy resources assessed under KRS 132.820, or owners of surface land
13 under which the unmined minerals lie, factual information about the owner's
14 property derived from third-party returns filed for that owner's property, under
15 the provisions of KRS 132.820, that is used to determine the owner's
16 assessment. This information shall be provided to the owner on a confidential
17 basis, and the owner shall be subject to the penalties provided in KRS
18 131.990(2). The third-party filer shall be given prior notice of any disclosure
19 of information to the owner that was provided by the third-party filer;
- 20 (f) Providing to a third-party purchaser pursuant to an order entered in a
21 foreclosure action filed in a court of competent jurisdiction, factual
22 information related to the owner or lessee of coal, oil, gas reserves, or any
23 other mineral resources assessed under KRS 132.820. The department may
24 promulgate an administrative regulation establishing a fee schedule for the
25 provision of the information described in this paragraph. Any fee imposed
26 shall not exceed the greater of the actual cost of providing the information or
27 ten dollars (\$10);

- 1 (g) Providing information to a licensing agency, the Transportation Cabinet, or
2 the Kentucky Supreme Court under KRS 131.1817;
- 3 (h) Statistics of gasoline and special fuels gallonage reported to the department
4 under KRS 138.210 to 138.448;
- 5 (i) Providing any utility gross receipts license tax return information that is
6 necessary to administer the provisions of KRS 160.613 to 160.617 to
7 applicable school districts on a confidential basis;
- 8 (j) Providing documents, data, or other information to a third party pursuant to an
9 order issued by a court of competent jurisdiction; or
- 10 (k) Providing information to the Legislative Research Commission under:
- 11 1. KRS 139.519 for purposes of the sales and use tax refund on building
12 materials used for disaster recovery;
- 13 2. KRS 141.436 for purposes of the energy efficiency products credits;
- 14 3. KRS 141.437 for purposes of the ENERGY STAR home and the
15 ENERGY STAR manufactured home credits;
- 16 4. KRS 141.383 for purposes of the film industry incentives;
- 17 5. KRS 154.26-095 for purposes of the Kentucky industrial revitalization
18 tax credits and the job assessment fees;
- 19 6. KRS 141.068 for purposes of the Kentucky investment fund;
- 20 7. KRS 141.396 for purposes of the angel investor tax credit;
- 21 8. KRS 141.389 for purposes of the distilled spirits credit;
- 22 9. KRS 141.408 for purposes of the inventory credit;
- 23 10. KRS 141.390 for purposes of the recycling and composting credit;
- 24 11. KRS 141.3841 for purposes of the selling farmer tax credit;
- 25 12. KRS 141.4231 for purposes of the renewable chemical production tax
26 credit;
- 27 13. KRS 141.524 for purposes of the Education Opportunity Account

1 Program tax credit;

2 14. KRS 141.398 for purposes of the development area tax credit;~~and~~

3 15. KRS 139.516 for the purposes of the sales and use tax exemption on the
4 commercial mining of cryptocurrency; and

5 16. Section 1 of this Act for the purposes of the data center sales and use
6 tax exemption.

7 (3) The commissioner shall make available any information for official use only and on
8 a confidential basis to the proper officer, agency, board or commission of this state,
9 any Kentucky county, any Kentucky city, any other state, or the federal government,
10 under reciprocal agreements whereby the department shall receive similar or useful
11 information in return.

12 (4) Access to and inspection of information received from the Internal Revenue Service
13 is for department use only, and is restricted to tax administration purposes.
14 Information received from the Internal Revenue Service shall not be made available
15 to any other agency of state government, or any county, city, or other state, and shall
16 not be inspected intentionally and without authorization by any present secretary or
17 employee of the Finance and Administration Cabinet, commissioner or employee of
18 the department, or any other person.

19 (5) Statistics of crude oil as reported to the department under the crude oil excise tax
20 requirements of KRS Chapter 137 and statistics of natural gas production as
21 reported to the department under the natural resources severance tax requirements
22 of KRS Chapter 143A may be made public by the department by release to the
23 Energy and Environment Cabinet, Department for Natural Resources.

24 (6) Notwithstanding any provision of law to the contrary, beginning with mine-map
25 submissions for the 1989 tax year, the department may make public or divulge only
26 those portions of mine maps submitted by taxpayers to the department pursuant to
27 KRS Chapter 132 for ad valorem tax purposes that depict the boundaries of mined-

1 out parcel areas. These electronic maps shall not be relied upon to determine actual
2 boundaries of mined-out parcel areas. Property boundaries contained in mine maps
3 required under KRS Chapters 350 and 352 shall not be construed to constitute land
4 surveying or boundary surveys as defined by KRS 322.010 and any administrative
5 regulations promulgated thereto.

6 ➔Section 3. Section 1 of this Act takes effect on August 1, 2022.